

AGREEMENT FOR HEARING OFFICER SERVICES

THIS AGREEMENT is made and entered into on the ____ day of January, 2025 (the “Effective Date”), by and between the City of Madeira Beach, a Florida municipal corporation, with an address of 300 Municipal Drive, Madeira Beach, FL 33708 (the “City”) and Sacha Dyson, with an address of 100 S. Ashley Drive, Suite 1400, Tampa, FL 33602-5302 (the “Contractor”), collectively referred to as the Parties, as follows:

WHEREAS, the City of Madeira Beach Code of Ordinances provides for certain personnel matters to be heard before a Hearing Officer; and

WHEREAS, the City periodically procures, on a non-exclusive basis, the contractual services of qualified attorneys to serve as Hearing Officers in order to ensure the City has a sufficient number of Hearing Officers to provide such services where recusals or availability may require alternative assignment of personnel matters; and

WHEREAS, the City’s Board of Commissioners has reviewed the qualifications of the Contractor to serve as Hearing Officer and finds the Contractor to be qualified; and

WHEREAS, the City’s Board of Commissioners finds that it is in the City’s best interests to enter this Agreement with the Contractor to provide Hearing Officer services.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Scope of Services.

Contractor shall provide to the City the following Hearing Officer services as the City may require, and under the following conditions:

- The Contractor shall conduct hearings as provided for in the City’s Personnel Policy, Rules and Procedures Manual, and the City Code related to personnel matters.
- When providing Hearing Officer services, the Contractor will be acting as a City official performing a municipal police power function. Therefore, in the execution of her duties, the Contractor shall at all times observe all applicable laws, including compliance with Florida’s Sunshine Law, the Public Records Law, and Florida’s Ethics Code for Public Officers and Employees (Part II of Florida Statutes Chapter 112).
- In performing as Hearing Officer, the Contractor must also become familiar with, and comply with the Florida Code of Judicial Conduct, including the opinions which have been published related to that Code’s applicability to Hearing Officers.
- The obligations of the Contractor expressly include the agreement of the Contractor (and, if applicable, the firm for which the Contractor works) not to undertake representation of

the City for any other matter during his term without the express prior approval of the City's Board of Commissioners, after having consulted with the City Attorney and after having reviewed the ethical considerations of such representation.

- The Contractor must have and maintain a sound and current understanding of the procedural and evidence rules (including relevant interpretive caselaw) associated with quasi-judicial hearings and for cause public employment termination cases.
- The Contractor shall serve at the pleasure of the City Board of Commissioners, and shall not be deemed an employee of the City.
- The City will not be responsible for the provision of clerical or administrative support for the Hearing Officer's legal research or drafting of orders or opinions. However, the City Manager may assign the City Clerk, or such other City agent, volunteer or employee as may be appropriate, to serve as the hearing clerk, who's responsibility it will be to receive or send correspondence related to a proceeding (including providing parties notices of hearing and transmitting final written opinions to parties), to transfer any pre-hearing pleadings, motions, correspondence or briefs to the Hearing Officer, and to maintain the official record of the proceedings (including the retention and maintenance of exhibits submitted by Parties).
- Hearings will be conducted at **City Hall, 300 Municipal Drive, Madeira Beach, FL 33708**, unless the City determines security or logistical considerations require an alternative location. The Hearing Officer will not be expected to provide hearing space.
- The scope of the Contractor's jurisdiction and authority shall be confined to the question whether, based on the facts and evidence introduced at the hearing, an appealing city employee was terminated for just cause. The Hearing Officer does not have jurisdiction to rule upon alleged violations of state or federal law, alleged violations of the state or federal constitution, or to base a ruling on common law theories founded in contract or equity.
- The Contractor will be expected to verbally rule upon motions and objections made during a hearing, to administer oaths to witnesses called by a party, issue subpoenas, compel the production of books, papers and other documents and to control her hearing room and the conduct of the proceedings according to the Judicial Cannons and City Code (including any resolutions or administrative rules of procedure adopted by the City relevant to the matter at issue).
- Final orders and opinions are to be made in writing, with said writing containing findings of fact and conclusions of law. Final orders and opinions shall be dated and electronically signed by the Contractor.
- Unless a different process is required by a given portion of City Code or state law, all final orders and opinions must be transmitted via email to the hearing clerk designated by the

City. The hearing clerk, not the Contractor, shall then transmit the final order or opinion to the parties in the manner prescribed by law.

- The Contractor will, when performing services for the City, be interacting with the City's employees and officials on a regular basis. The Contractor must, during all such interactions, dress in a professional manner befitting of her role, and must treat all such persons with professionalism and respect.
- The Contractor shall be entitled to communicate with the City Attorney for the purposes of gaining an understanding of the contents and organization of the City Code, the City's Personnel Policy, Rules and Procedure Manual appeals process, procedures and forms, and similar matters of general information. However, the Contractor shall not conduct *ex-parte* communications with the City Attorney or any City official with respect to a specific case, appeal, or other matter before her.
- Assignment of a matter to Contractor or any other contracted Hearing Officer shall be made by the City-appointed hearing clerk who will, once a new matter requiring a hearing arises, inform the selected Hearing Officer of the assignment and the identity of the party or parties, and shall provide a copy of the initial termination file (including the relevant citation and copies of such documents and correspondence as may exist up to the date of the assignment) so the Contractor may review the party identities and basic facts to review for conflicts. Upon assignment, the Hearing Officer shall review the matter to ensure she does not have any ethical conflicts such as would require recusal. However, conflict check materials shall not be considered to be in evidence at a hearing, and it will be up to the parties to present their witnesses and documentary evidence formally at the hearing. The Hearing Officer shall, once a matter is assigned, work with the assigned hearing clerk to schedule the hearing in a prompt manner.
- If Contractor determines prior to the hearing convening that recusal is required, she shall inform the hearing clerk in writing (including email) of the reason for the recusal or other inability to serve. If the Contractor convenes a hearing only to then determine that recusal is required, she shall recess the hearing and enter a formal order of recusal which the hearing clerk will transmit to the parties.
- The City intends to contract with more than one attorney/firm for Hearing Officer services so as to allow for matters to proceed in the event of a recusal, and so as to ensure redundancy of capacity for this service. To ensure a relatively equitable distribution of assignments, the hearing clerk will, when making assignments, use a rotational list which favors assignment to the Hearing Officer who has heard a matter the longest, and which places at the end of the list the Hearing Officer who has most recently heard a matter. While this process will be used to help ensure fair distribution of the work, nothing herein shall be intended to create a right of a Hearing Officer to receive any given assignment, nor of a party to have any given Hearing Officer assigned to her/his/its case.

2. Term, Extension.

A. The initial term of this Agreement shall be from the Effective Date through 11:59 p.m., December 31, 2026. The Parties agree that unless the City, in its sole discretion, provides notice of intent not to renew at least thirty (30) calendar days prior to the end of the initial term, this Agreement shall automatically renew on January 1st, 2027, for a renewal term through 11:59 p.m. of December 31, 2027. Thereafter, unless the City, in its sole discretion, provides notice of intent not to renew at least thirty (30) calendar days prior to the end of the renewal term, this Agreement shall automatically renew on January 1st, 2028. Thereafter, this Agreement may continue to automatically renew on the same annual dates unless notice is provided by the City in the manner set forth above.

B. Notwithstanding the foregoing, either Party may terminate this Agreement at any time during a term for any or no reason upon giving the non-terminating Party at least thirty (30) calendar days prior written notice. However, any such termination shall not relieve Contractor of the obligation to bring to conclusion any matter currently before her as Hearing Officer even if such conclusion extends past the termination date. Nor does any such termination relieve the City of its obligation to pay all properly submitted invoices for undisputed work performed by Contractor, including work performed to bring a matter to conclusion past the termination date.

C. The insurance and indemnification obligations set forth in this Agreement survive the expiration or termination thereof.

3. Payment

A. Pursuant to Florida Statutes §§ 218.73 and 218.74, Contractor shall be paid \$300.00 per hour for all Hearing Officer services performed not more than forty-five (45) days after Contractor has submitted to the City a proper and undisputed invoice, which invoice shall be submitted only after the Contractor's required services have been completed.

B. Improper payment requests shall be addressed by the City as provided for in Florida Statutes § 218.76, and any disputes with respect to payment of an invoice shall be determined as provided for in that statute and any associated City procurement codes or procedures applicable to resolution of vendor payment disputes.

4. Amendments.

This Agreement may only be amended by a written Amendment executed by both Parties.

5. Severability.

In the event that any provision or portion of this Agreement shall be found to be invalid or unenforceable, then such provision or portion may be severed, and such invalidity or unenforceability shall not affect the validity or enforceability of any other provision or portion of the Agreement.

6. Miscellaneous Terms.

A. **Qualifications.** Contractor represents and warrants to the City that she is lawfully entitled to provide the services required herein under the laws of the State of Florida and will continue to meet throughout the term(s) of this Agreement all of the qualifications required by the City, including status as a current Florida licensed attorney in good standing. Contractor must immediately inform the City Manager and City Attorney in the event she has any required license (including Florida Bar membership in good standing) suspended or revoked, or is disciplined by The Florida Bar, the state bar of a foreign state, or any other governmental regulatory agency.

B. **Attorney Fees.** In any action brought between the Parties to enforce or construe the terms of this Agreement, each Party shall bear its own attorneys' fees and costs, including any fees incurred on appeal, regardless of the resolution of the case or appeal(s).

C. **Immigration Compliance: E-Verify.** Contractor and/or Contractor's law firm acknowledges that she/it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, U.S.C. § 1324, *et seq.*, and regulations relating thereto. Failure to comply with the above statutory provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement. The Contractor's law firm's employment of unauthorized aliens is a violation of § 274(e) of the Federal Immigration and Employment Act. The Contractor and/or Contractor's law firm shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of this Agreement and shall require the same verification procedure of any Subcontractors authorized by the Owner. Pursuant to Florida Statutes § 448.095(2), beginning January 1st, 2021, Contractor (unless Contractor employs no one else) and/or Contractor's law firm shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Contractor's contract with the City cannot be renewed unless, at the time of renewal, Contractor certifies in writing to the City that she and/or Contractor's law firm has registered with and uses the E-Verify system (or that it is not an employer). If Contractor enters into a contract with a subcontractor, the subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and Contractor shall maintain a copy of such affidavit for the duration of the contract. If Contractor develops a good faith belief that any subcontractor with which she is contracting has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) Contractor shall terminate the contract with the subcontractor. If the City develops a good faith belief that Contractor has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) the City shall terminate this contract. Pursuant to Florida Statutes § 448.095(2)(c)(3), termination under the above circumstances is not a breach of contract and may not be considered as such.

D. **Indemnification, Preservation of Immunity.** Contractor's law firm and City hereby agree to fully indemnify and hold harmless the other, its officers, employees, and agents from and against any and all claims, losses, costs, expenses, actions and causes of action, including reasonable

attorney's fees at all levels, arising out or by reason of any damage or injury to persons or property suffered or claimed to have been suffered, by any intentional, reckless or negligent act or omission of the indemnifying party, its directors, officers, employees, or agents in the carrying out of the terms and conditions of this Agreement. The Party claiming right to indemnification ("Claimant") will give the indemnifying Party ("Indemnitor") prompt notice of any such claim and the Indemnitor will undertake the defense thereof by representatives of its own choosing. In the event Indemnitor, within a reasonable time after notice of claim, fails to defend, the Claimant shall have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and risk of the Indemnitor, subject to the right of the Indemnitor to assume such defense at any time prior to settlement, compromise or final determination thereof. Notwithstanding the foregoing, in the event either Party reasonably believes that counsel defending any such action has unacceptable conflicts of interest or otherwise lacks the skill to adequately protect such Party's interest, such Party reserves the right to defend itself with its own counsel or retained counsel at the Indemnitor's expense, unless the Claimant is found negligent or otherwise responsible for the occasion of the litigation. Nothing herein shall be interpreted as a waiver by the City of its rights, including the procedural requirements and limited waiver of immunity, as set forth in Florida Statutes § 768.28, or any other statute, and the City expressly reserves these rights to the full extent allowed by law.

E. No Third-Party Beneficiary. This Agreement is for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intent of the Parties to enter this Agreement for any other person's or entity's benefit, and no person or entity not a Party to this Agreement is intended to have standing to file any court action seeking the enforcement or interpretation thereof.

F. Jurisdiction, Venue, Applicable Law. In the event of any litigation between the Parties with respect to the interpretation or enforcement of this Agreement, same shall be conducted, if in state court, in the appropriate circuit or county court in and for Pinellas County, Florida, and if in federal court, in the United States District Court for the Middle District of Florida, Tampa Division. In any such litigation, the substantive and procedural laws of the State of Florida shall be applied.

G. Public Records. In accordance with Florida Statutes § 119.0701, the Contractor shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the requesting City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.

4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF MADEIRA BEACH, CITY CLERK'S OFFICE, AT:

TELEPHONE: 727.391.9951

EMAIL: cvanblargan@madeirabeachfl.gov

ADDRESS: 300 Municipal Drive, Madeira Beach, FL 33708

H. **Assignment and Subcontracting.** The City has selected Contractor for her stated skills, resources, abilities and unique experience, as represented to the City by Contractor. Contractor has represented to the City that she has the in-house capabilities, resources and expertise to perform the services required by this Agreement except as otherwise expressly set forth in this Agreement. Therefore, except in the case of a sale, transfer or assignment of all or substantially all of the assets of Contractor to a successor who has asserted its intent to continue the business of Contractor, Contractor shall not assign or transfer any right or duty under this Agreement to any other party without the prior written consent of the City. In the unlikely event Contractor asserts it is necessary to subcontract for the services of third parties to perform the services required under this Agreement not already provided for therein, Contractor shall first obtain prior written approval of the City Board of Commissioners. Approval to utilize any third party shall not relieve Contractor from any direct liability or responsibility to the City pursuant to the provisions of this Agreement, or obligate City to make any payments other than payments due to Contractor as outlined in this Agreement. While requests to subcontract are strongly discouraged and unlikely to be granted, in the event the City grants such permission, Contractor is obligated to ensure any such subcontractor's contract expressly incorporates the terms and conditions of this Agreement and acknowledges the City as an intended third-party beneficiary thereof.

I. **Notices.** Any and all notices sent pursuant to this Agreement shall be given in writing via certified mail or overnight courier and shall be delivered to the following addresses:

As to Contractor:

As to City:

Sacha Dyson
Bush, Graziano, Rice and Hearing, P.A.
100 S. Ashley Drive, Suite 1400
Tampa, FL 33602-5302

Madeira Beach City Clerk
300 Municipal Drive
Madeira Beach, FL 33708

IN WITNESS WHEREOF, the Parties have set their hands and seals on the Effective Date.

City of Madeira Beach

Contractor

By: _____
Anne-Marie Brooks, Mayor

By:  _____
Sacha Dyson